



AGENDA

BOARD OF MAYOR AND ALDERMEN

SPECIAL CALLED BUSINESS MEETING

Friday, August 9, 2013

Council Room – 2nd Floor, City Hall

8:15 a.m.

Board of Mayor and Aldermen

Mayor Dennis R. Phillips, Presiding

Alderman John Clark
Alderman Colette George
Vice Mayor Mike McIntire

Alderman Tom C. Parham
Alderman Tom Segelhorst
Alderman Jantry Shupe

City Administration

John G. Campbell, City Manager
J. Michael Billingsley, City Attorney
James Demming, City Recorder

- I. **CALL TO ORDER**
- II. **PLEDGE OF ALLEGIANCE TO THE FLAG**
- III. **ROLL CALL**
- IV. **OTHER BUSINESS**
 - A. Consideration of a Resolution Approving an Option Agreement and Authorizing the Mayor to Execute the Same (AF: 225-2013)
 - Resolution
- V. **CITIZENS' COMMENTS**

Citizens may speak on issue-oriented items. When you come to the podium, please state your name and address and sign the register that is provided. You are encouraged to keep your comments non-personal in nature, and they should be limited to five minutes.
- IX. **ADJOURN**



AGENDA ACTION FORM

Consideration of a Resolution Approving an Option Agreement and Authorizing the Mayor to Execute the Same

To: Board of Mayor and Aldermen
 From: John G. Campbell, City Manager

Action Form No.: AF: 225-2013
 Work Session: N/A
 First Reading: N/A

Final Adoption: August 9, 2013
 Staff Work By: John Campbell
 Presentation By: John Campbell

Recommendation: Approve the resolution.

Executive Summary

The city manager requests approval of an Option Agreement on 9.688 acres, more or less, next to Indian Trail Drive, directly behind Kmart. The property, if purchased, will be used for the planned sports complex. The Option Agreement gives the city an option on the property for 90 days. The cost of the option is \$5,000, which will be applied toward the purchase price, should the city exercise the option to purchase the property. If the city chooses not to exercise the option, the property owners will retain the \$5,000. The option is exercised by giving notice to the property owners, along with an executed Agreement for the Sale and Purchase of Real Estate, a copy of which is attached to the Option Agreement as Exhibit B. The decision to exercise the option will have to be approved by the board. If the option is exercised, the Agreement for the Sale and Purchase of Real Estate gives the city additional time to review the purchase. The purchase price is \$726,750.00.

An aerial photograph showing the property is attached.

The resolution approves the Option Agreement, authorizes the mayor to make certain changes to the Agreement, if necessary, and authorizes the mayor to execute the agreement.

Attachments:

1. Resolution
2. Aerial photograph

Funding source appropriate and funds are available: _____

	<u>Y</u>	<u>N</u>	<u>O</u>
Clark	—	—	—
George	—	—	—
McIntire	—	—	—
Parham	—	—	—
Segelhorst	—	—	—
Shupe	—	—	—
Phillips	—	—	—

RESOLUTION NO. _____

A RESOLUTION APPROVING AN OPTION AGREEMENT WITH ROGER BALL AND CARROLL E. ROSE ON 9.668 ACRES, MORE OR LESS, LOCATED NEXT TO INDIAN TRAIL DRIVE; AUTHORIZING THE MAYOR TO MAKE CERTAIN CHANGES TO THE AGREEMENT, IF NECESSARY; AND AUTHORIZING THE MAYOR TO EXECUTE THE SAME AND ALL DOCUMENTS NECESSARY AND PROPER TO EFFECTUATE THIS RESOLUTION

WHEREAS, the City Manager has requested approval of an Option Agreement on 9.688 acres, more or less, of property located next to Indian Trail Drive, directly behind Kmart; and

WHEREAS, the property, if purchased will be used for the planned sports complex; and

WHEREAS, the Option Agreement gives the city an option to the property for 90 days, at a cost of \$5,000.00, which will be applied to the purchase price, should the city exercise the option to purchase the property; and

WHEREAS, if the city chooses not to exercise the option to purchase the property, the property owners retain the \$5,000.00;

Now therefore,

BE IT RESOLVED BY THE BOARD OF MAYOR AND ALDERMEN AS FOLLOWS:

SECTION I. That an Option Agreement for 9.688 acres, more or less, of property located next to Indian Trail Drive directly behind Kmart, at a cost of \$5,000.00, is approved.

SECTION II. That the mayor, or in his absence, incapacity, or failure to act, the vice-mayor, is authorized to execute, in a form approved by the city attorney and subject to the requirements of Article X, Section 10 of the Charter of the City of Kingsport, an Option Agreement for 9.688 acres, more or less, of property located next to Indian Trail Drive, directly behind Kmart, and all other documents necessary and proper, and to take such acts as necessary, to effectuate the purpose of the agreement or this resolution, said draft of the amendment being as follows:

OPTION AGREEMENT

This Option Agreement is made and entered into this ____ day of _____, 2013 between ROGER BALL AND CARROLL E. ROSE, individuals with the address 1894 Highway 25 E, P. O. Box 1237, Tazewell, Tennessee 37879 (herein "Seller"), and THE CITY OF KINGSPORT, TENNESSEE, a municipal corporation organized under the laws of the State of Tennessee with offices at 225 West Center Street, Kingsport, Tennessee 37660 (herein "Buyer").

WITNESSETH:

WHEREAS, Seller is the owner in fee simple of a certain tract of real property located in Kingsport, Sullivan County, Tennessee and more particularly described below; and

WHEREAS, Seller desires to grant an option to purchase for such real property to Buyer and Buyer desires to obtain an option to purchase the real property upon certain terms and conditions as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations herein contained, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

SECTION 1. PROPERTY.

The real property subject to this Agreement is all of a tract of land (hereinafter "Property") located on Indian Trail Drive, Kingsport, Tennessee and containing 9.688 acres, more or less, and shown as Tract 1 on the plat entitled "Subdivision of Tazwell Properties, LLC", recorded in Plat Book 52, Page 324 in the Office of the Register of Deeds for Sullivan County, Tennessee at Blountville, Sullivan County Tax Map 047P, Group A, parcel 004.05 and as described in Exhibit A, which is attached hereto and incorporated herein by reference, together with all improvements and fixtures thereon; and together with all right, title, and interest of Seller in and to (a) any and all easements and rights-of-way appurtenant to the property; and (b) any and all land lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining the Property; (c) all buildings, structures, improvements and fixtures situated thereon; and (d) all hereditments and appurtenances thereunto belonging or in any way appertaining.

SECTION 2. OPTION PERIOD & EARNEST MONEY.

Purchaser has deposited with Seller as Earnest Money the sum of Five Thousand and No/100 Dollars (\$5,000.00) paid by Buyer to Seller, the receipt of which is hereby acknowledged, for option on the Property. The Earnest Money is to be held subject to this Option Agreement. Seller grants to Purchaser the option to notify Seller at any time after the effective date of this document for ninety (90) days following such date (the "Option Period") of Buyer's intent to purchase the Property described in Section 1 hereinabove. Buyer may exercise the option to purchase the Property at any time during the Option Period. Buyer shall exercise such option as set out in Section 3 hereinafter. Except as otherwise provided in this Agreement, if the Buyer does not exercise this Option Seller may keep the Earnest Money as its sole consideration for this Option Agreement. If the Buyer exercises its option to purchase the Property then at the closing of the purchase of the Property all Earnest Money shall be applied to the Purchase Price. In the event the purchase and sale does not close the Earnest Money will be disbursed pursuant to the Agreement for the Sale and Purchase of Real Estate.

SECTION 3. EXERCISE OF OPTION.

In the event Buyer elects to purchase the Property pursuant to the Option, Buyer shall provide notice to Seller of Purchaser's intention to so exercise the option on or before the expiration of the Option Period. Such notice shall be in writing and delivered to Seller personally or at the above stated address and shall include an executed Agreement for the Sale and Purchase of Real Estate, in the form attached to this Option Agreement as Exhibit B. The terms and conditions of the Agreement for the Sale and Purchase of Real Estate shall then control the Property and be binding on both parties. Upon delivery of duplicate originals of the Agreement for the Sale and Purchase of Real Estate Seller executed by Buyer, Seller shall be obligated to execute the same and return a duplicate original to Buyer.

SECTION 4. CONTROLLING LAW; VENUE; WAIVER OF JURY TRIAL.

This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Option Agreement shall be filed in the state or federal courts for Sullivan County, Tennessee. The parties waive any right to a trial by jury.

SECTION 5. BINDING EFFECT.

This Option Agreement shall be binding upon the parties hereto, their heirs, executors, administrators and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Option Agreement in duplicate originals the day and year first above written.

[Acknowledgements Deleted for Inclusion in this Resolution]

EXHIBIT A

Description of Property

Beginning on the easterly Right-of-Way line of Indian Trail Drive at the southwesterly corner of property owned by the Kmart Corporation and the northwesterly corner of Tract 1 of the Subdivision of Tazwell Properties, LLC, and being the property herein described; thence with the line of Kmart and the line of Tract 1, S 62°56'57" E a distance of 665.05 feet to an iron rod; thence N 23°08'26" E a distance of 263.58 feet to an iron rod; thence leaving the Kmart line S 65°20'02" E a distance of 189.84 feet to the westerly Right-of-Way line of Executive Park Boulevard; thence with the westerly Right-of-Way line of Executive Park Boulevard S 13°26'58" W a distance of 245.92 feet to an iron rod; thence with the southerly terminal line of Executive Park Boulevard S 76°33'05" E a distance of 80.02 feet to an iron rod; thence leaving said Right-of-Way S 09°39'27" W a distance of 316.20 feet to an iron rod; thence S 13°26'27" W a distance of 181.38 feet to an iron rod; thence with the southerly line of Tract 1 and the northerly line of Tract 2, N 76°33'33" W a distance of 400.89 feet to an iron rod; thence N 13°26'27" E a distance of 278.20 feet to an iron rod; thence N 62°58'54" W a distance of 597.08 feet to the westerly Right-of-Way line of Indian Trail Drive and an iron rod; thence leaving the line of Tract 2 and with the Right-of-Way line of Indian Trail Drive N 23°07'23" E

a distance of 60.00 feet to an iron rod; thence N 66°52'37" W a distance of 40.00 feet to an iron rod; thence N 23°07'23" E a distance of 195.01' to an iron rod and the point of beginning, and containing 9.688 acres as shown on a plat from John R. Mize Tennessee Registered Land Surveyor No. 9891 and entitled "Subdivision of Tazwell Properties, LLC", recorded in Plat Book 52, Page 324 in the Office of the Register of Deeds for Sullivan County, Tennessee at Blountville.

EXHIBIT B

AGREEMENT FOR THE SALE AND PURCHASE OF REAL ESTATE

THIS REAL ESTATE PURCHASE AGREEMENT (herein "Agreement") made and entered into this ____ day of _____, 2013 between ROGER BALL AND CARROLL E. ROSE, individuals with the address 1894 Highway 25 E, P. O. Box 1237, Tazewell, Tennessee 37879 (herein "Seller"), and THE CITY OF KINGSFORT, TENNESSEE, a municipal corporation organized under the laws of the State of Tennessee with offices at 225 West Center Street, Kingsport, Tennessee 37660 (herein "Buyer").

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, including specifically, without limitation, the receipt and sufficiency of which are hereby acknowledged, and in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

SECTION 1. SALE.

Seller agrees to sell, convey, assign, transfer and deliver to Buyer, and Buyer agrees to purchase, acquire and take from Seller, subject to the terms and conditions of this Agreement, all that real property situate, lying and being located in the City of Kingsport, Sullivan County, Tennessee, containing 9.688 acres, more or less, and shown as Tract 1 on the plat entitled "Subdivision of Tazwell Properties, LLC", recorded in Plat Book 52, Page 324 in the Office of the Register of Deeds for Sullivan County, Tennessee at Blountville, Sullivan County Tax Map 047P, Group A, parcel 004.05, more particularly described on Exhibit A attached hereto and hereby made a part hereof, together with together with all improvements and fixtures thereon; and together with all right, title, and interest of Seller in and to (a) any and all easements and rights-of-way appurtenant to the property; and (b) any and all land lying in the bed of any streets, roads, highways, alleys or driveways in front of and adjoining the property; (c) all buildings, structures, improvements and fixtures situated thereon; and (d) all hereditments and appurtenances thereunto belonging or in any way appertaining (herein "Real Property").

SECTION 2. PURCHASE PRICE.

(a) Amount. The purchase price to be paid by Buyer to Seller for the Real Property shall be Seven Hundred Twenty-Six Thousand Seven Hundred Fifty and No/100 Dollars (\$726,750.00) (the "Purchase Price").

(b) Earnest Money. The Five Thousand and No/100 Dollars (\$5,000.00) paid to Seller by Buyer for an option on this Real Property will be the earnest money for this Agreement (the "Earnest Money").

(c) Terms of Payment. The Purchase Price, less the Earnest Money previously paid, shall be paid by Buyer to Seller in cash or certified funds payable to Seller on the Closing Date.

SECTION 3. CLOSING.

The closing shall occur on or before _____, 2013 (the "Closing Date"), at a time and location mutually agreed upon by the parties or, upon failure of the parties to agree, at a time and place specified by the Seller (the "Closing"), provided it shall take place in Kingsport, Tennessee. At the Closing, Seller shall execute and deliver to Buyer (a) a general warranty deed conveying fee simple title to the Real Property to Buyer subject only to the Permitted Exceptions provided for in the Title Insurance Policy contemplated in Section 6 of this Agreement, all easements or uses apparent on the ground and the encumbrances and easements of record, but otherwise free and clear of all liens and encumbrances except such as have been approved in writing by Buyer; (b) any and all applicable transfer tax declarations or other transfer or sale disclosure statements required by applicable law; (c) a title affidavit in a form satisfactory to Buyer and Buyer's title insurance company, suitable to permit the title company to delete the standard, pre-printed exceptions (that are identified in the title commitment) from the title policy; (d) a closing statement; and (f) such other instruments, certificates or affidavits as may be provided herein or as Buyer or title company may reasonably request to effect the intention of the parties hereunder. Buyer and Seller agree to deliver and execute such other documents as may be reasonable and necessary in the opinion of counsel for Seller and Buyer to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions hereof.

SECTION 4. SURVEY.

Within ten days after the date of this Agreement Seller shall, at Buyer's cost, cause a survey and surveyor's certificate, in form sufficient to remove the survey exception from the title insurance

binder as more specifically provided in Section 5 hereof, to be prepared on the Real Property by a licensed surveyor acceptable to Buyer. The survey shall be made in accordance with the Minimum Standard Detail Requirements for ALTA/ACSM Land Title surveys for a Class A survey. Such survey shall show the total area of the Real Property in acres, easements, if any, location of adjoining streets and rights of way, building setback lines, and such other details as may be required by Buyer. Once prepared, the survey description will replace Exhibit A and will become a part of this Agreement as Exhibit A, and such survey description shall be insurable (and shall be insured) by the title insurance company. If the survey (i) is for good cause not acceptable to Buyer's title insurance company; or (ii) shows the dimensions of the Real Property to be other than as set forth on Exhibit A; or (iii) shows any materially adverse conditions or matters affecting the Real Property, which are not approved by Buyer, then Buyer, within twenty (20) days from receipt of such survey, shall notify Seller in writing of Buyer's objections to the survey and Seller shall thereupon have twenty (20) days to remove or cure such objections to the satisfaction of the Buyer and the title company. If Seller fails to satisfy such objections with the time specified, Buyer shall have the right to (i) terminate this Agreement whereupon all Earnest Money shall be returned to Buyer; (ii) extend the time period for removing or curing any objectionable item by written notice to Seller; or (iii) close this purchase and sale without reduction in the Purchase Price.

SECTION 5. TITLE INSURANCE.

Buyer, at its expense, shall secure an owner's title insurance commitment to issue a title insurance policy insuring Buyer's fee simple interest in the Real Property to the extent of the Purchase Price. The title insurance commitment will be issued by a reputable title insurance company chosen by Buyer and will contain exceptions only for real estate taxes and assessments for the current year which are not yet due and payable, and any other exceptions Buyer may approve in writing (herein "Permitted Exceptions"). If the commitment contains other exceptions, not acceptable to Buyer, then Buyer shall so notify Seller of such exceptions within twenty (20) days of Buyer's receipt of the commitment, and Seller shall have twenty (20) days from receipt of the Buyer's objections, to resolve such exceptions to the satisfaction of the Buyer. If Seller is unable to cure or resolve such exceptions to Buyer's satisfaction within the time specified, Buyer shall have the right to terminate this Agreement, extend the cure period, or proceed to close this Agreement. In the event Buyer elects to terminate this Agreement pursuant to this Section 5, then this Agreement shall be cancelled, the Earnest Money shall be refunded to Buyer, in full, and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement.

SECTION 6. FEASIBILITY STUDY AND INSPECTIONS.

Buyer shall have the right to conduct a feasibility and engineering study of the Real Property for a period of thirty (30) days from the latest of the dates of execution by the parties hereto ("Feasibility Period"). Buyer and its agents or representatives shall be entitled to enter upon the Real Property at all reasonable times during the Feasibility Period in order to conduct engineering studies, environmental assessments (including, but not limited to, an Environmental Phase I Assessment), water quality tests, soil tests, and any other inspections and/or tests that Buyer may deem necessary or advisable. In the event the results of Buyer's studies or inspection of the Real Property determine that the Real Property is unacceptable to Buyer, in Buyer's sole discretion, then Buyer may elect to terminate this Agreement and shall so notify Seller in writing on or before the expiration of the aforesaid thirty (30) day period. If Buyer shall provide written notice of cancellation to Seller within this thirty (30) day period, then this Agreement shall be cancelled, the Earnest Money shall be refunded to Buyer, in full, and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement.

SECTION 7. DEED AND TITLE.

(a) Seller hereby agrees to deliver good and marketable fee simple title to the Real Property by general warranty deed, suitable for recordation and satisfactory to Buyer's title company and Buyer's counsel. Other than Permitted Exceptions, title to the Real Property shall not be subject to any easements, encumbrances or other exceptions which Buyer, in its sole discretion, deems unacceptable.

(b) In the event, as of the Closing Date, Seller is unable to convey marketable title to the Real Property due to defects in Seller's title, or Seller is unable to convey title due to exceptions Buyer finds unacceptable, then Closing shall be postponed for a reasonable period of time not to exceed thirty (30) days until Seller shall remove said title defects or exceptions. If Seller is unable to cure such title defects or exceptions within said thirty (30) days, this Agreement shall be null and void, all Earnest Money previously deposited by Buyer shall be returned to Buyer, and there shall be no further obligations between the parties. If Buyer shall waive such title defects or exceptions by so notifying Seller in writing, or if Seller shall have cured such defects or exceptions, as provided herein, the obligations of the parties hereunder shall not be affected by reason thereof, there shall be no abatement or reduction of the Purchase Price, and this transaction shall be consummated in

accordance with the terms and provisions of this Agreement, except that such title defects or exceptions that are waived by Buyer, if any, shall be set forth as exceptions in the deed.

(c) In the event Buyer fails to purchase the Real Property for reasons not otherwise provided for in this Agreement where Seller is willing and able to convey marketable title, Seller shall retain the Earnest Money as Seller's sole and exclusive remedy.

SECTION 8. REAL PROPERTY SOLD "AS IS".

By execution of this Agreement, the Buyer acknowledges that the Real Property is being sold to Buyer "AS IS," with no representation, guarantee or warranty, excluding the warranty in the general warranty deed, regarding the condition of the Real Property, or any portion thereof, or any structure or other improvement erected thereon. To the best of Seller's knowledge, the Real Property has not been used, and is not presently being used, and will not through the Closing Date, be used for the storage or disposal of hazardous or toxic materials. Seller is not aware of any facts, conditions or circumstances indicating any form of environmental contamination affecting the Real Property or any properties which are adjacent to the Real Property.

SECTION 9. CONDITIONS PRECEDENT.

(a) Buyer's obligations pursuant to this Agreement are contingent upon and subject to the satisfaction in Buyer's sole discretion, as of Closing, of each of the following conditions (any of which may be waived in whole or in part in writing by the Buyer at or prior to Closing):

(1) The matters, conditions and exceptions, if any, reflected on the survey described in Section 4 shall be acceptable to Buyer.

(2) The results of the title examination report and title insurance commitment described in Section 5 shall be acceptable to Buyer as of Closing. There shall be no change in the matters reflected in the title insurance commitment described in Section 5 hereof, and there shall not exist any encumbrances or title defects affecting the Real Property not described in such title insurance commitment.

(3) The results of the feasibility study, engineering and related inspections, water quality and environmental testing described in Section 6 shall be acceptable to Buyer.

(4) All of the representations, warranties and conditions of Seller set forth in this Agreement shall be true and correct as of the date hereof, and as of the Closing Date, and Seller shall not, on or prior to Closing, have failed to meet, comply with or perform any conditions or obligations on Seller's part required by the terms of this Agreement.

(5) There shall be no change in the matters reflected in the survey described in Section 4 hereof, and there shall not exist any easement, right of way, encroachment, waterway, pond, flood plain, conflict, or a protrusion with respect to the Real Property not shown on the survey.

(6) No material and substantial change shall have occurred with respect to the Real Property which would in any way affect the findings made in the feasibility and engineering studies or inspections described in Section 6, if such studies or inspections have been conducted.

(7) Buyer shall have determined that the Real Property is not a protected habitat for any endangered or protected species of plant, animal, or other living organism.

(b) If any condition specified in Section 9(a) is not fully satisfied by Closing, or any extension thereof pursuant to this Agreement, Buyer may, at its option, waive such unsatisfactory condition precedent and consummate this Agreement, or may terminate this Agreement by written notice to Seller, and upon such termination, this Agreement shall be cancelled, the Earnest Money shall be refunded to Buyer, in full, and thereafter neither Seller nor Buyer shall have any continuing obligation to each other under this Agreement.

SECTION 10. SELLER'S WARRANTIES & COVENANTS.

Seller represents and warrants to Buyer as follows:

(a) At Closing, Seller will have title to the Real Property free and clear of all liens, encumbrances, covenants, restrictions, right-of-way, easements, and any other matters affecting title, except for matters which are in the public records and those Permitted Exceptions that have been expressly approved in writing by Buyer.

(b) Between the date of this Agreement and Closing Seller will not enter into any agreement, commitment or other undertaking which may affect title to the Real Property or Buyer's intended development and use of the Real Property.

(c) No person or entity, other than Buyer, has or will acquire any right, or option, to acquire the Real Property or is or will be entitled to possession of all or any part thereof.

(d) Except as disclosed in this Agreement, Seller has no information or knowledge of any change contemplated in any applicable laws, ordinances, or restrictions, or any judicial or administrative action, or any action by adjacent land owners, or natural or artificial conditions upon the Real Property, or any other fact, circumstance or condition, financial or otherwise, which would prevent, limit, impede, or render more costly Buyer's contemplated use, which use is a sports complex.

(e) Seller agrees, at no additional fee to Buyer, to provide access to Seller's storm water and sewer systems necessary for Buyer to comply with any and all storm water drainage requirements of said Real Property.

SECTION 11. NOTICE.

Any notice or demand on either party hereunder shall be deemed to have been given when mailed to the other party by Certified Mail, Return Receipt Requested, postage prepaid at the addresses set forth below:

SELLER: Roger Ball and Carroll E. Rose
1894 Highway 25 E
P. O. Box 1237
Tazewell, Tennessee 37879
BUYER: City of Kingsport, Tennessee
225 West Center Street
Kingsport, Tennessee 37605
Attention: City Manager
With a Copy to
City Attorney
City of Kingsport, Tennessee
225 West Center Street
Kingsport, Tennessee 37660

SECTION 12. PRORATIONS.

All real estate taxes and assessments shall be prorated as of the Closing Date, using for such purpose the rate and valuation shown on the latest available tax notice.

SECTION 13. EXPENSES OF SELLER.

In closing this transaction, Seller shall be charged with the following:

- (a) The cost of preparation of the deed;
- (b) All real estate taxes and assessments accruing prior to the Closing Date;
- (c) The fees and expenses of any attorney or other advisor engaged by Seller in connection with this transaction; and
- (d) The commission or fees charged by any real estate broker or agent retained or used by Seller in connection with this transaction.

SECTION 14. EXPENSES OF BUYER.

In closing this transaction, Buyer shall be charged with the following:

- (a) The cost of any title search and title insurance policy;
- (b) The cost of recording the deed and any transfer tax associated with the recording of the deed;
- (c) The cost of the survey provided pursuant to Section 4;
- (d) Any fees charged in connection with any attorney or other advisor engaged by Buyer in connection with this transaction;
- (e) The cost of the title insurance provided pursuant to Section 5; and
- (f) The commission or fees charged by any real estate broker or agent retained or used by Buyer in connection with this transaction.

SECTION 15. RISK OF LOSS.

The risk of loss or damage to any of the Real Property described above by fire, vandalism, or other casualty shall remain with the Seller until Closing. In the event of such loss before Closing, this Agreement shall be voidable at the option of Buyer. Should Buyer elect to continue with the purchase following such loss or damage before Closing, Buyer shall have the option to (a) negotiate an equitable reduction in the Purchase Price or (b) close this Agreement at the stated Purchase Price and accept all insurance funds and other monies payable to Seller regarding such loss or damage. If action is necessary to recover under any casualty policy, Seller shall cooperate with Buyer in bringing such action in Seller's name and Seller shall reimburse Buyer for the attorney fees and other expenses incurred by Buyer to pursue such claim.

SECTION 16. BROKERS.

Each party represents to the other that it has not retained or used the services of a broker or agent in connection with this transaction. To the extent permitted by state law each party agrees to indemnify and hold the other harmless from any claims of brokers or agents for fees or commissions arising out this Agreement. In addition, each party agrees to pay its own attorney's fees in connection with this Agreement and Closing.

SECTION 17. SELLER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

Seller hereby represents and warrants to Buyer as a condition to Buyer's obligations hereunder, the following matters to true and correct on the date of this Agreement and on the Closing Date:

- (a) Seller has not entered into any other presently effective agreement to sell the Real Property, or any portion thereof, nor has it granted any presently effective option for the sale of the Real Property, or any portion thereof, or right of first refusal or right of first offer with respect thereto;
- (b) Seller has no knowledge of pending or contemplated condemnation proceedings affecting the Real Property, the abutting streets, or any part thereof;
- (c) Seller is not now a party to any litigation with respect to the Real Property, and Seller knows of no litigation or threatened litigation affecting the title to the Real Property. Seller shall give to Buyer prompt notice of the institution of any such litigation prior to the Closing Date, which will entitle Buyer to cancel the purchase of Real Property;
- (d) Seller is not a "foreign person" as defined in the Internal Revenue Code of 1986, as amended, and as contemplated by the Foreign Investments in Real Property Tax Act (96 Stat. 2682), as amended by the Deficit Reduction Act of 1984, and Buyer has no obligation to withhold and pay over to the U. S. Internal Revenue Service any part of the "amount realized" by Seller in the transaction contemplated hereby;
- (e) Seller has the authority and power to enter into this Agreement and to consummate the transactions contemplated herein and is legally obligated to Buyer in accordance with the terms and provisions of this Agreement;
- (f) The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Real Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Seller is a party, any judicial order or judgment of any nature by which Seller is bound; and
- (g) All necessary and appropriate action has been taken by Seller authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Seller of the documents and instruments to be executed by Seller on the Closing Date, and the performance by Seller of Seller's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Real Property as contemplated herein.

SECTION 18. BUYER'S WARRANTIES, REPRESENTATIONS AND COVENANTS.

Buyer hereby represents and warrants to Seller solely as to the following matters, each of which is so warranted to be true and correct as of the date hereof and shall, as a condition to Seller's obligations hereunder, be true and correct on the Closing Date:

- (a) The execution and delivery of this Agreement and the performance by Buyer of its obligations hereunder have been duly authorized by all required action of Buyer;
- (b) Buyer has the right, power and authority to make and perform its obligations under this Agreement and this Agreement is a valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms, subject to bankruptcy, reorganization and other similar laws affecting the enforcement of creditors' rights generally;
- (c) Buyer, other than set out in this Agreement, does not require any consents or approvals from any third party with respect to the execution and delivery of this Agreement or with respect to the performance by Buyer of its obligations hereunder, including the purchase of the Real Property from Seller;
- (d) The execution and entry into this Agreement, the execution and delivery of the documents and instruments to be executed and delivered by Buyer on the Closing Date, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the full consummation of the purchase and sale of the Real Property as contemplated herein, are consistent with and not in violation of, and will not create any adverse condition under, any contract, agreement or other instrument to which Buyer is a party, any judicial order or judgment of any nature by which Buyer is bound; and
- (e) All necessary and appropriate action has been taken by Buyer authorizing and approving the execution of and entry into this Agreement, the execution and delivery by Buyer of the documents and instruments to be executed by Buyer on the Closing Date, and the performance by Buyer of Buyer's duties and obligations under this Agreement and of all other acts necessary and appropriate for the consummation of the purchase and sale of the Real Property as contemplated herein.

SECTION 19. TIME IS OF THE ESSENCE.

Time is of the essence to the performance of this Agreement.

SECTION 20. MERGER CLAUSE.

All understandings and agreements heretofore had between the parties are merged in this Agreement, which alone fully and completely expresses their agreement, and the same is entered

into after full investigation, neither party relying upon any statement, representation, express or implied warranties, guarantees, promises, statements, "setups", representation, or information, not embodied in this Agreement, made by the other, or by any agent, employee, servant, or other person representing or purporting to represent the Seller. This Agreement contains the full agreement between the parties and there are no other contracts, express or implied, which are not stated herein.

SECTION 21. POSSESSION.

Delivery of possession of the Real Property shall occur at Closing.

SECTION 22. BINDING EFFECT.

This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective heirs, legal representatives and assigns.

SECTION 23. APPROVALS.

Seller shall cooperate with Buyer in obtaining any approvals within Seller's jurisdiction and control that are required under this Agreement or contemplated by Buyer's intended use of the Real Property.

SECTION 24. CAPTIONS.

The section headings or captions appearing in this Agreement are for convenience only, are not a part of this Agreement and are not to be considered in interpreting this Agreement.

SECTION 25. ENTIRE AGREEMENT; MODIFICATIONS.

This written Agreement constitutes the entire and complete agreement between the parties hereto and supersedes any prior oral or written agreements between the parties with respect to the Real Property. It is expressly agreed that there are no verbal understandings or agreements which in any way change the terms, covenants and conditions herein set forth, and that no modification of this Agreement and no waiver of any of its terms and conditions shall be effective unless in writing and duly executed by the parties hereto.

SECTION 26. CONTROLLING LAW; VENUE; WAIVER OF JURY TRIAL.

This Agreement has been made and entered into under the laws of the State of Tennessee, and said laws shall control the interpretation thereof. Venue for any litigation concerning this Agreement shall be filed in the state or federal courts for Sullivan County, Tennessee. The parties waive any right to a trial by jury.

SECTION 27. NON-LIABILITY OF CITY OFFICIALS AND EMPLOYEES.

No member, official, or employee of Buyer shall be personally liable to Seller in the event any provision of the Agreement is unenforceable, or there is any default or breach by Buyer, or for any amount which may become due under the Agreement, or on any obligations under the terms of the Agreement.

SECTION 28. MISCELLANEOUS PROVISIONS.

(a) This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

(b) This Agreement is intended to be solely for the benefit of the parties hereto and their respective successors and assigns, and the provisions of this Agreement are not intended to be, and shall not be construed, for the benefit of any third party.

(c) Each party has been represented by counsel and has had the opportunity to share in the drafting of this Agreement and accordingly this Agreement shall not be construed either for or against either party as the drafter.

SECTION 29. FURTHER ACTS.

Each party hereto agrees to do, execute, acknowledge and deliver all such further acts, assignments, transfers, assurances and instruments that may reasonably be required to fully effectuate the transactions contemplated in this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hands to this for the Sale and Purchase of Real Estate in duplicate originals the day and year first written above.

[Acknowledgements Deleted for Inclusion in this Resolution]

EXHIBIT A

Description of Real Property

Beginning on the easterly Right-of-Way line of Indian Trail Drive at the southwesterly corner of property owned by the Kmart Corporation and the northwesterly corner of Tract 1 of the Subdivision of Tazwell Properties, LLC, and being the property herein described; thence with the line of Kmart and the line of Tract 1, S 62°56'57" E a distance of 665.05 feet to an iron rod; thence N 23°08'26" E a distance of 263.58 feet to an iron rod; thence leaving the Kmart line S 65°20'02" E a distance of 189.84 feet to the westerly Right-of-Way line of Executive Park Boulevard; thence with the westerly Right-of-Way line of Executive Park Boulevard S 13°26'58" W a distance of 245.92 feet to an iron rod; thence with the southerly terminal line of Executive Park Boulevard S 76°33'05" E a distance of 80.02 feet to an iron rod; thence leaving said Right-of-Way S 09°39'27" W a distance of 316.20 feet

to an iron rod; thence S 13°26'27" W a distance of 181.38 feet to an iron rod; thence with the southerly line of Tract 1 and the northerly line of Tract 2, N 76°33'33" W a distance of 400.89 feet to an iron rod; thence N 13°26'27" E a distance of 278.20 feet to an iron rod; thence N 62°58'54" W a distance of 597.08 feet to the westerly Right-of-Way line of Indian Trail Drive and an iron rod; thence leaving the line of Tract 2 and with the Right-of-Way line of Indian Trail Drive N 23°07'23" E a distance of 60.00 feet to an iron rod; thence N 66°52'37" W a distance of 40.00 feet to an iron rod; thence N 23°07'23" E a distance of 195.01' to an iron rod and the point of beginning, and containing 9.688 acres as shown on a plat from John R. Mize Tennessee Registered Land Surveyor No. 9891 and entitled "Subdivision of Tazwell Properties, LLC", recorded in Plat Book 52, Page 324 in the Office of the Register of Deeds for Sullivan County, Tennessee at Blountville.

SECTION III. That the mayor is further authorized to make such changes, approved by the mayor and the city attorney, to the agreement set out herein that do not substantially alter the material provisions of the agreement, and the execution thereof by the mayor and the city attorney is conclusive evidence of the approval of such changes.

SECTION VI. That the board finds that the actions authorized by this resolution are for a public purpose and will promote the health, comfort and prosperity of the citizens of the city.

SECTION VII. That this resolution shall take effect from and after its adoption, the public welfare requiring it.

ADOPTED this the 10th day of August, 2013.

DENNIS R. PHILLIPS, MAYOR

ATTEST:

JAMES H. DEMMING, CITY RECORDER

APPROVED AS TO FORM:

J. MICHAEL BILLINGSLEY, CITY ATTORNEY

